

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

RICHARD F. STOKES  
JUDGE

1 THE CIRCLE, SUITE 2  
SUSSEX COUNTY COURTHOUSE  
GEORGETOWN, DE 19947

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Re: ***Sycamore Farms, Inc. v. Barnes Electric, Inc.***  
C.A. No. 08C-05-007 RFS

*Upon Defendant's Motion to Dismiss. Denied.*

Submitted: August 15, 2011  
Decided: October 20, 2011

Dear Counsel:

Defendant Barnes Electric, Inc. has filed a motion to dismiss Plaintiff Sycamore Farms, Inc.'s Complaint sounding in negligence. The motion is denied.

In the summer of 2006, Plaintiff decided to upgrade its five poultry houses in order to qualify to grow chickens for Perdue, Inc. Plaintiff entered into a contract with Defendant for completion of the upgrades. When the job was complete, Plaintiff paid the invoice in full. In June 2007, electrical failures in poultry house 4 allegedly caused the death of one of six flocks of chickens.

Defendant replaced the breakers, and Plaintiff entered into a contract with a different

chicken processing company.

While conceding that Defendant fulfilled the contract, Plaintiff alleges that Defendant negligently failed to foresee the possibility of an overload and negligently failed to plan to increase the amperage of the electrical system. Plaintiff claims a loss of profit from the dead flock and also for its subsequent loss of the Perdue contract.

Plaintiff seeks judgment in the amount of \$52,094.11, plus pre-judgment and post-judgment interest, costs and attorney's fees.

Defendant argues for dismissal because the Complaint is barred by the economic loss doctrine.

The economic loss doctrine prohibits recovery in tort where a product has damages only itself, that is, where it has not caused personal injury or damage to other property, and the only losses suffered are economic in nature.<sup>1</sup> Economic loss is defined as monetary loss, costs of repair or replacement, loss of employment, loss of business or employment opportunities, loss of good will and diminution in value.<sup>2</sup> Originating in products liability actions, the economic loss doctrine now applies to nearly any dispute arising from a commercial transaction where the alleged damages do no harm to a person or property other than the bargained-for item.<sup>3</sup>

The threshold issue for determining whether the economic loss doctrine applies is

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<sup>1</sup>*Danforth v. Acorn Structures, Inc.*, 608 A.2d 1194, 1195 (Del. 1992).

<sup>2</sup>*Brasby v. Morris*, 2007 WL 949485 (Del. Super.).

<sup>3</sup>*McKenna v. Terminex International Co.*, 2006 WL 1229674 (Del. Super.).

whether the defendant breached a duty independent of its contractual obligations.<sup>4</sup> Here, Plaintiff alleges that Defendant was negligent in failing to test and failing to make a contractual provision for the upgrade of the breakers. Plaintiff further alleges that Defendant held itself out as being familiar with Perdue's requirements and therefore knew or should have known of the need for increased amperage.

In a negligence action, the defendant is entitled to judgment as a matter of law where there is no reasonable view of the evidence under which a fact finder could find in favor of the plaintiff.<sup>5</sup> On the papers presented, such a conclusion cannot be drawn. Disputed issues of foreseeability and proximate cause involve factual determinations that must also be resolved by the fact finder.<sup>6</sup> Moreover, the loss of the chickens would appear to be property damage. All these matters will be resolved at trial.

Defendant's motion to dismiss for failure to state a claim is **DENIED**.

**IT IS SO ORDERED.**

Very truly yours,

Richard F. Stokes

cc: Prothonotary

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<sup>4</sup>*Id.*

<sup>5</sup>*Pipher v. Parsell*, 930 A.2d 890, 892 (Del. 2007).

<sup>6</sup>*Id.*